

Message Text

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ACTION OES-06

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FM USMISSION IAEA VIENNA
TO SECSTATE WASHDC PRIORITY 8634
INFO AMEMBASSY MEXICO
USERDA HQ WASHDC
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C O N F I D E N T I A L SECTION 1 OF 3 IAEA VIENNA 1054

DEPT PASS IO/SCT

E.O. 11652: GDS
TAGS: IAEA, TECH, MNUC, MX, PARM
SUBJECT: PROPOSED TRANSFER OF U.S. RESEARCH REACTOR TO MEXICO

REF: (A) STATE 020240, (B) MEXICO 1167, (C) 76 IAEA VIENNA 6105,
(D) 76 IAEA VIENNA 6508

SUMMARY: MISSION HAS DISCUSSED WITH IAEA ARRANGEMENTS
FOR TRANSFER OF GIFT RESEARCH REACTOR FROM OREGON STATE
UNIVERSITY TO NATIONAL POLYTECHNIC INSTITUTE IN MEXICO.
MISSION COMMENTS AND RESPONSES TO ISSUES RAISED REF A FOLLOW
BELOW. MEXICANS INTEND TO PROCEED BUT FEBRUARY BOARD OF
GOVERNORS ACTION IS DOUBTFUL. ACTION REQUESTED: U.S. VIEWS
PER PARA 14 BELOW. END SUMMARY.

1. FOLLOWING RECEIPT REFTEL, MISSION CHECKED WITH AGENCY
LEGAL DIVISION STAFF MEMBER CONCERNED WITH PROJECT/SUPPLY
AGREEMENTS AND LEARNED THAT MEXICAN MISSION HAD RECENTLY
SENT LETTER TO AGENCY COMMENTING ON DRAFT AGREEMENT
PREPARED LAST JULY (SEE REFS C AND D), THUS CONFIRMING GOM
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INTENTIONS TO PROCEED WITH ARRANGEMENTS FOR TRANSFER OF RE-
SEARCH REACTOR AND FUEL THEREFOR.

2. MUCH TO OUR AND AGENCY'S DISMAY, GOM HAS INDICATED IN
ITS LETTER THAT PHRASE IN UNDERTAKING IN PARA 1 OF ARTICLE
VII, "...OR FOR THE MANUFACTURE OF ANY NUCLEAR EXPLOSIVE
DEVICE", SHOULD BE DELETED. MEXICANS ARGUE (INCORRECTLY)

THAT "DELETION OF THIS PHRASE IS CONSISTENT WITH THE PRESENT POSITION OF THE AGENCY, WHICH IS TENDING TO FAVOR -- WITH DUE CONTROLS -- THE PEACEFUL USE OF NUCLEAR EXPLOSIONS." MEXICANS STATE FURTHERMORE THAT "OBJECTIVES OF THE AGENCY'S SAFEGUARDS SYSTEM ARE FULLY COVERED...", SINCE "...EARLIER IN THE SAME ARTICLE EXPLICIT REFERENCE IS MADE TO THE UNDERTAKING NOT TO USE THE REACTOR OR THE MATERIAL IN SUCH A WAY AS TO FURTHER ANY MILITARY PURPOSE."

3. MEXICANS ALSO REQUESTED REVISION AS FOLLOWS OF LAST PARAGRAPH OF SECTION 3 OF ANNEX ("SAFETY STANDARDS AND MEASURES") TO CONFORM TO AGENCY'S REVISED HEALTH AND SAFETY STANDARDS AND MEASURES (INFCIRC/18/REV.1): QUOTE ONCE THE AGENCY HAS DETERMINED THAT THE SAFETY MEASURES PROVIDED FOR ARE ADEQUATE, IT SHALL GIVE ITS CONSENT FOR THE START OF THE ASSISTED OPERATION. QUOTE SHOULD MEXICO DESIRE TO MAKE SUBSTANTIAL MODIFICATIONS TO THE PROCEDURES WITH RESPECT TO WHICH INFORMATION HAS BEEN SUBMITTED, OR TO PERFORM ANY OPERATIONS WITH THE SUPPLIED REACTOR WITH RESPECT TO WHICH OPERATIONS NO SUCH INFORMATION HAS BEEN SUBMITTED, IT SHALL SUBMIT TO THE AGENCY ALL RELEVANT INFORMATION AS SPECIFIED IN PARAGRAPH 4.7 OF THE SAFETY DOCUMENT, ON THE BASIS OF WHICH THE AGENCY WILL BE ABLE TO REQUIRE THE APPLICATION OF ADDITIONAL SAFETY MEASURES IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH 4.8 OF THE SAFETY DOCUMENT. ONCE MEXICO HAS UNDERTAKEN TO APPLY THE ADDITIONAL SAFETY MEASURES REQUESTED BY THE AGENCY, THE AGENCY SHALL GIVE ITS CONSENT FOR THE MODIFICATIONS OR OPERATIONS REFERRED TO ABOVE. UNQUOTE.

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4. RE PARA 2 ABOVE, AGENCY HAS, IN DISCUSSIONS WITH MEXICAN MISSION REP, POINTED OUT: (A) THAT DG HAS MADE CLEAR IN HIS STATEMENT OF FEBRUARY 25, 1975 TO BOARD THAT "...AN INVARIABLE AND CARDINAL OBLIGATION INVOLVED IN (THE UNDERTAKING IN AGENCY AGREEMENTS THAT SAFEGUARDED ITEMS WOULD NOT BE USED...TO FURTHER ANY MILITARY PURPOSE) WAS THAT THE NUCLEAR MATERIALS SHOULD ALSO NOT BE USED FOR THE DEVELOPMENT, MANUFACTURE OR TESTING OF NUCLEAR EXPLOSIVE DEVICES OF ANY KIND," (B) THAT THIS UNDERSTANDING HENCEFORTH WOULD BE SET FORTH EXPLICITLY IN ALL FUTURE SAFEGUARDS AGREEMENTS; (C) AND THAT, SINCE MEXICO, AS PARTY TO TREATY OF TLAQUELOTECO AND NPT, HAS ALREADY ASSUMED OBLIGATIONS, INTER ALIA, NOT TO MANUFACTURE NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES, MEXICO WOULD NOT BE TAKING ON ANY NEW OBLIGATIONS BY ACCEPTING UNDERTAKING AS PROPOSED BY AGENCY.

5. PROPOSED REVISION RE HEALTH AND SAFETY ANNEX IS ACCEPTABLE TO AGENCY, SUBJECT TO MINOR DRAFTING CHANGES TO ASSURE

CONSISTENCY WITH TERMS USED IN SAID ANNEX. MISSION RECOMMENDS ACCEPTANCE, SINCE IT IS CONSISTENT WITH INFCIRC/18/REV.1.

6. RE SPECIFIC ISSUES IDENTIFIED REF A, MISSION'S VIEWS FOLLOW BELOW.

7. GIFT MATERIAL. GIVEN BACKGROUND OF THIS PROPOSED TRANSACTION, MISSION RECOMMENDS THAT U.S. PROCEED IMMEDIATELY FOLLOWING BOARD APPROVAL OF PROJECT WITH ALLOCATION OF GIFT AS PART OF U.S. GIFT OF \$50,000 WORTH OF SNM FOR CY 1977. WE RECOGNIZE THAT THIS IS CONTRARY TO OUR NORMAL PATTERN IN PAST YEARS OF ALLOCATING THE GIFT AT END OF YEAR, BUT WE CONSIDER CIRCUMSTANCES OF THIS CASE TO BE EXCEPTIONAL, SINCE

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C O N F I D E N T I A L SECTION 2 OF 3 IAEA VIENNA 1054

WE HAD ALREADY INFORMALLY ADVISED BOTH THE MEXICANS AND THE AGENCY LAST AUGUST OF OUR WILLINGNESS TO PROCEED WITH ARRANGEMENTS FOR THE TRANSFER OF THE RESEARCH REACTOR AND ITS FUEL AS A GIFT.

8. REPROCESSING, STORAGE OR RETRANSFER PROVISIONS. MISSION BELIEVES SIMPLE AND EFFECTIVE WAY OF HANDLING PROPOSALS SUGGESTED PARA 5 REF A WOULD BE TO ADD FOLLOWING SENTENCE AT END OF ARTICLE I: "THE SUPPLIED REACTOR AND SUPPLIED MATERIAL SHALL BE USED EXCLUSIVELY AND REMAIN AT THE MEXICAN NATIONAL POLYTECHNIC INSTITUTE UNLESS OTHERWISE AGREED BY THE PARTIES TO THIS AGREEMENT." WE DOUBT THAT THIS

PROPOSAL WOULD CAUSE ANY PROBLEM FOR EITHER THE AGENCY OR MEXICO, SINCE THE CONCEPT ALREADY WAS INCLUDED IN THE DIRECTOR GENERAL'S COVERING MEMO TO THE BOARD (SEE PARA 8 OF GOV/1808 CONCERNING THIS PROJECT WHICH WAS WITHDRAWN LAST SEPTEMBER). U.S. MAY, HOWEVER, ALSO WISH TO CONSIDER DESIRABILITY OF A BILATERAL EXCHANGE OF NOTES ELABORATING ON THE INTENTION BEHIND THIS PROVISION IN ORDER TO AVOID CONFIDENTIAL

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ANY FUTURE MISUNDERSTANDINGS WITH GOM.

9. BACKUP SAFEGUARDS. MISSION BELIEVES IT IS WORTHWHILE PURSUING POSSIBILITY OF INCLUDING PROVISION IN THIS AGREEMENT TO PROVIDE U.S. WITH SOME SORT OF BACKUP SAFEGUARDS RIGHTS, WHICH COULD BE USED AS PRECEDENT FOR FUTURE AGENCY PROJECT/SUPPLY AGREEMENTS. IN THIS CONNECTION, OUR FIRST PREFERENCE WOULD BE TO PROVIDE EXPLICITLY FOR SPECIFIC U.S. RIGHTS IN EVENT AGENCY FOR ANY REASON IS UNABLE TO APPLY ITS SAFEGUARDS. OUR SECOND PREFERENCE WOULD BE TO PROVIDE THAT MEXICO AND THE U.S. WOULD AGREE FORTHWITH ON ALTERNATIVE SAFEGUARDS MEASURES (UNSPECIFIED), AND OUR THIRD PREFERENCE WOULD BE ALONG LINES OF LANGUAGE SUGGESTED PARA 6 REF A, BUT SLIGHTLY MODIFIED FOR PRECISION, I.E., CHANGE "IAEA" TO "BOARD OF GOVERNORS OF THE AGENCY." SEE PARA 12 BELOW FOR SUGGESTED LANGUAGE FOR EACH OF THESE ALTERNATIVES. RE OUR FIRST PREFERENCE, IT SHOULD BE NOTED THAT WE HAVE BORROWED CONCEPT OF DETERMINATION BY BOARD OF GOVERNORS FROM STANDARD U.S. TRILATERAL SAFEGUARDS AGREEMENTS WITH AGENCY (SECTION 4) AND COMBINED IT WITH APPROPRIATELY ADAPTED STANDARD SAFEGUARDS PROVISIONS OF U.S. BILATERAL AGREEMENTS. WE HAVE INFORMALLY DISCUSSED THIS CONCEPT IN PRINCIPLE WITH AGENCY (FISCHER), AND WHILE HIS REACTION WAS LESS THAN ENTHUSIASTIC, MISSION BELIEVES THERE IS CHANCE THAT AGENCY WOULD BE PREPARED TO ACCEPT CONCEPT, DEPENDING ON SPECIFIC LANGUAGE USED. FYI. WE HAVE NOT RPT NOT YET MENTIONED SECOND OR THIRD FALLBACK ALTERNATIVES. END FYI. MISSION WOULD APPRECIATE COMMENTS AND ADDITIONAL GUIDANCE ON HANDLING THIS ISSUE.

10. STRENGTHENING OF UNDERTAKING. RE SUGGESTION PARA 7 REF A TO INCLUDE LANGUAGE PROSCRIBING
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"DEVELOPMENT" AS WELL AS "MANUFACTURE" OF WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES, WE ARE UNAWARE OF ANY AGENCY SAFEGUARDS AGREEMENTS APPROVED BY THE BOARD CONTAINING THE "DEVELOPMENT" CONCEPT. AGENCY STANDARD UNDERTAKING IS THAT CONTAINED IN FRG/BRAZIL/IAEA SAFEGUARDS AGREEMENT. WHILE AGENCY INCLUDED "DEVELOPMENT" IN THE UNDERTAKING IN ITS DRAFT SAFEGUARDS AGREEMENTS RELATED TO TECHNICAL ASSISTANCE, AGENCY IS DOUBTFUL THAT THIS WILL BE ACCEPTED. MOREOVER, MISSION IS CONCERNED THAT EXPLICIT REFERENCE TO "DEVELOPMENT" MIGHT UNDERMINE INTENT AND MEANING OF NPT UNDERTAKING AS WELL AS UNDERTAKINGS IN ALL NPT SAFEGUARDS AGREEMENTS PROSCRIBING "MANUFACTURE" OF NUCLEAR WEAPONS OR OTHER EXPLOSIVE DEVICES. IN ANY EVENT, GIVEN THE EXISTING PROBLEM BETWEEN MEXICO AND THE AGENCY OVER THE LANGUAGE IN THE UNDERTAKING, AS NOTED PARA 2 ABOVE, MISSION QUESTIONS DESIRABILITY OF INTRODUCING NEW ELEMENT IN UNDERTAKING.

11. MISSION SHARES DESIRABILITY INCORPORATING STRENGTHENED NON-PROLIFERATION CONTROLS IN THIS RPO-POSED PROJECT/SUPPLY AGREEMENT TO SERVE AS PRECEDENT FOR FUTURE AGREEMENTS, EVEN THOUGH STRICTLY SPEAKING, ITEMS TO BE TRANSFERRED UNDER THIS PARTICULAR ARRANGEMENT BY THEMSELVES HARDLY JUSTIFY SUCH INCREASED CONCERN. UNFORTUNATELY, DUE TO IMMINENT DEPARTURES OF BOTH MEXICAN AMBASSADOR AND OF COUNSELOR MOST FAMILIAR WITH THIS PROPOSED ARRANGEMENT, AND BECAUSE LITTLE TIME REMAINS BEFORE BOARD MEETING BEGINNING FEBRUARY 22 TO REACH AGREEMENT ON ALL OUTSTANDING ISSUES, MISSION IS DOUBTFUL THAT THIS PROJECT COULD BE PLACED BEFORE FEBRUARY BOARD OF APPROVAL. NEVERTHELESS, MISSION BELIEVES WE SHOULD ACTIVELY PURSUE MATTER WITHOUT DELAY AND ATTEMPT TO RESOLVE ALL OUTSTANDING ISSUES.

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12. FOLLOWING ARE OUR PROPOSED ALTERNATIVES FOR PREFERENCES NOTED IN PARA 10 ABOVE, WHICH CONSIST OF ADDING A PARA 3 TO ARTICLE VII OF PROPOSED AGREEMENT:

(A) ALTERNATIVE #1

"IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY DETERMINES THAT THE AGENCY IS FOR ANY REASON UNABLE TO ENSURE, SO FAR AS IT IS ABLE, THAT THE SUPPLIED REACTOR AND ANY NUCLEAR MATERIAL CONTAINED, USED,

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PRODUCED OR PROCESSED IN OR BY THE USE OF THE SUPPLIED REACTOR
IS NOT BEING USED FOR THE MANUFACTURE OF NUCLEAR WEAPONS OR TO
FURTHER ANY MILITARY PURPOSE OR FOR THE MANUFACTURE OF ANY
NUCLEAR EXPLOSIVE DEVICE, MEXICO AGREES THAT THE UNITED
STATES SHALL HAVE THE FOLLOWING RIGHTS: (A) WITH RESPECT TO
THE SUPPLIED REACTOR AND ANY NUCLEAR MATERIAL CONTAINED,
USED, PRODUCED OR PROCESSED IN OR BY THE USE OF THE REACTOR:
(1) TO REQUIRE THE MAINTENANCE AND PRODUCTION OF OPERATING
RECORDS AND TO REQUEST AND RECEIVE REPORTS FOR THE PURPOSE
OF ASSISTING IN ENSURING ACCOUNTABILITY FOR SUCH MATERIALS,
AND (2) TO REQUIRE THAT ANY SUCH MATERIALS IN THE CUSTODY OF
MEXICO OR ANY PERSON UNDER ITS JURISDICTION BE SUBJECT TO THE
UNDERTAKING SET FORTH IN PARAGRAPH 1 OF THIS ARTICLE AND TO
ALL OF THE PROVISIONS OF THIS PARAGRAPH; (B) TO DESIGNATE,
AFTER CONSULTATION WITH MEXICO, PERSONNEL WHO, ACCOMPANIED,
IF EITHER PARTY SO REQUESTS BY PERSONNEL DESIGNATED BY MEXICO,
SHALL HAVE ACCESS IN THE UNITED MEXICAN STATES TO ALL PLACES
AND DATA NECESSARY TO ACCOUNT FOR THE NUCLEAR MATERIAL SUBJECT
TO PARAGRAPH 1 OF THIS ARTICLE TO DETERMINE WHETHER THERE IS
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COMPLIANCE WITH THIS ARTICLE AND TO MAKE SUCH INDEPENDENT MEASUREMENTS AS MAY BE DEEMED NECESSARY; AND (C) THE RIGHTS ACCORDED TO THE UNITED STATES PURSUANT TO THIS PARAGRAPH SHALL ALSO EXTEND TO REPLICATED NUCLEAR REACTORS AND TO SPECIAL NUCLEAR MATERIAL UTILIZED IN, RECOVERED FROM OR PRODUCED AS A RESULT OF THE USE OF SUCH REACTORS IN THE SAME MANNER AS IF SUCH REACTORS OR MATERIAL WERE LISTED IN PARAGRAPH 1 OF THIS ARTICLE; AND (D) IN THE EVENT OF NON-COMPLIANCE WITH THE PROVISIONS OF THIS PARAGRAPH AND THE FAILURE OF MEXICO TO CARRY OUT THE PROVISIONS OF THIS PARAGRAPH WITHIN A REASONABLE TIME, OR IN THE EVENT OF NON-COMPLIANCE WITH THE UNDERTAKING SET FORTH IN PARAGRAPH 1 OF THIS ARTICLE, THE UNITED STATES SHALL HAVE THE RIGHT TO REQUIRE THE RETURN OF THE SUPPLIED NUCLEAR REACTOR AND THE SUPPLIED MATERIAL REFERRED TO IN ARTICLES II AND III."

(B) ALTERNATIVE #2:

"IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY DETERMINES THAT THE AGENCY IS FOR ANY REASON UNABLE TO ENSURE, SO FAR AS IT IS ABLE, THAT THE SUPPLIED REACTOR AND ANY NUCLEAR MATERIAL CONTAINED, USED, PRODUCED OR PROCESSED IN OR BY THE USE OF THE SUPPLIED REACTOR IS NOT BEING USED FOR THE MANUFACTURE OF NUCLEAR WEAPONS OR TO FURTHER ANY MILITARY PURPOSE OR FOR THE MANUFACTURE OF ANY NUCLEAR EXPLOSIVE DEVICE, MEXICO AND THE UNITED STATES SHALL AGREE FORTHWITH ON ALTERNATIVE MEASURES TO BE TAKEN TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH IN PARAGRAPH 1 OF THIS ARTICLE."

(C) ALTERNATIVE #3:

"IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY SHOULD DETERMINE THAT THE AGENCY IS FOR ANY REASON UNABLE TO APPLY SAFEGUARDS PURSUANT TO THIS ARTICLE, MEXICO AND THE UNITED STATES SHALL CONSULT REGARDING THE ALTERNATIVE MEASURES TO BE TAKEN TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH
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IN PARAGRAPH 1 OSURI FCLE."

13. RE MISSION COMMENTS ON DRAFT TEXT OF PROPOSED AGREEMENT PROVIDED REF D, WE WERE NOT RPT NOT AWARE AT THAT TIME THAT THE FUEL FOR THE RESEARCH REACTOR IS ACTUALLY OWNED BY ERDA. ACCORDINGLY, OUR PROPOSED REVISIONS SET FORTH IN PARAS 2(E), 2(F), AND 2(G) OF REF D SHOULD BE DISREGARDED. WHETHER REFERENCES TO ERDA IN LAST PREAMBULAR PARA, ARTICLE XIV AND IN SIGNATURE LINE SHOULD ALSO BE RETAINED DEPENDS ON WHETHER OR NOT ERDA WOULD SIGN AGREEMENT ON BEHALF OF USG. MISSION REQUESTS GUIDANCE ON THIS POINT, PARTICULARLY IF WE ARE

SUCCESSFUL IN INTRODUCING BACKUP SAFEGUARDS CONCEPT.

14. MISSION WOULD APPRECIATE RECEIVING RESPONSES AND/OR
COMMENTS TO PARAS 5, 7, 8, 9, 10 AND 13 ABOVE. PLEASE ADVISE.STONE

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Message Attributes

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